

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY T. RYALES,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 01-1116
	:	
PILLING WECK SURGICAL,	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

June 24, 2002

Presently before the court is Pilling Weck Surgical's ("Pilling" or "Defendant") Motion for Partial Summary Judgment. Anthony T. Ryales ("Ryales" or "Plaintiff") asserts claims of race discrimination and retaliation against Defendant under Title VII, 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981 and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951 et seq. For the reasons stated below, Defendant's motion is GRANTED in part and DENIED in part.

I. BACKGROUND

Pilling is in the business of manufacturing and distributing surgical instruments. Plaintiff, who is African American, was hired by Pilling in October 1986 as a maintenance technician, performing jobs such as painting, servicing air conditioning units, servicing factory machinery and cleaning.

Pilling classified the employees in the maintenance department as (in order of increasing responsibility) Trainee, Maintenance Technician C, Maintenance Technician B, and Maintenance Technician A. Pilling later moved to a Skilled Based Pay classification system, which ranked employees as Maintenance Trainee, levels 1 through 5 and Maintenance Associate, levels 1 through 5. Over the course of Plaintiff's employment with Pilling, he consistently received incremental pay increases. In 1988, Plaintiff received a promotion from Maintenance Trainee to Maintenance Technician B.

In 1992, a job opening became available for a Maintenance Technician A position. The job responsibilities for this position included maintenance and repair on facility environmental control, heating, cooling, and process equipment. Defendant asserts that this position was primarily created to bring someone into Pilling experienced with computer-controlled equipment, experience which no current Pilling employee possessed. Plaintiff applied for, but did not receive the promotion. Pilling filled the position with a Caucasian male who had computer-controlled equipment experience.

In 1994 another Maintenance Technician A position became available. This position required the successful applicant to be a certified electrician. Plaintiff applied for,

but did not receive this promotion. Pilling filled the position with a Filipino male who was a certified electrician.

Plaintiff made inquiry with his supervisor as to why he was denied promotion to Maintenance Technician A positions. His supervisor advised him that he needed to complete a certification process with respect to specific job responsibilities in the maintenance department in order to be promoted. Between 1994 and 1998, Plaintiff complied, becoming certified in various maintenance department skills such as plumbing, HVAC, mechanical, electrical and electronic controls.

Subsequent to Plaintiff's completion of the certification program, another Maintenance Technician A position became available. Plaintiff applied for this position, however, the position was never filled by Pilling due to budgetary constraints.

In March 1999, Pilling instituted its new Skilled Based Pay program. This program was designed by Pilling to compensate its employees based on gaining and mastering skills associated with team-based or individual jobs. Plaintiff, after more than 12 years with Pilling, was classified as a Maintenance Trainee level 3. Under the program, employees were to be trained in various skills on the job and subsequently evaluated and certified by a committee. According to Plaintiff, the certification program under the Skilled Based Pay program was

substantially similar to the certification program Plaintiff underwent in 1994 through 1998. Plaintiff, however, could not use his previous certifications in the new program and was expected to go through the appropriate certification processes anew.

In September 1999, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") and concurrently with the Pennsylvania Human Relations Commission ("PHRC"). The EEOC filing set forth Plaintiff's complaint that two males, one Caucasian and one of Filipino heritage, had been promoted while he had been denied the promotions, despite the fact that he was qualified for the positions. Plaintiff also complained that Pilling was requiring him to complete a certification program that was extremely similar to one he just completed. Furthermore, Plaintiff noted, he was the only Pilling employee required to undergo two certification programs. Finally, Plaintiff complained that he was dissatisfied with his classification under Pilling's new Skilled Based Pay program as a Maintenance Trainee level 3 and asserted that he exceeded the job qualifications for the position.

Plaintiff maintains that throughout his employment with Pilling, he performed all of his duties in a satisfactory manner. Plaintiff further asserts that he routinely performed job

responsibilities that were Maintenance Technician A responsibilities (under the old classification system) but was not paid a Maintenance Technician A's salary nor given the higher title.

In 2000, Plaintiff was promoted to a Maintenance Associate. On February 5, 2001, Pilling terminated Plaintiff's employment, along with approximately 30 other Pilling employees, in a reduction in force. Subsequent to his termination, Plaintiff filed another charge with the EEOC on the basis that he believed he was terminated in retaliation for filing the first discrimination charge with the EEOC.

On March 8, 2001, Plaintiff filed the instant lawsuit. Plaintiff's Complaint asserts that he was subjected to intentional, illegal discrimination, claiming that Pilling (1) failed to promote him to an open and available position in 1992; (2) failed to promote him to an open and available position in 1994; (3) failed to promote him to an open and available position in 1998; (4) required him to undergo a certification program in 1994 through 1998, which no other Pilling employee was required to undergo; (5) underclassified him as a Maintenance Trainee in 1999; (6) terminated his employment in 2001; (7) terminated his employment in retaliation for filing a charge of discrimination with the EEOC; (8) failed to compensate Plaintiff fairly and equally as measured against other employees with similar

qualifications; (9) required him to undergo a second certification process that was substantially similar to one which he already completed; (10) failed to promote him, generally, given his experience and qualifications; and (11) assigned him low grades on an evaluation in skill sets for which he had previously been certified.

Defendant moves for partial summary judgment addressing Plaintiff's failure to promote, certification requirement, termination and retaliation claims. Defendant asserts that these claims are either time barred and cannot be saved by application of the continuing violation theory or insufficient as a matter of law.

II. STANDARD

A motion for summary judgment shall be granted if the Court determines "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In addition, "[i]nferences to be drawn from the underlying facts contained in the evidential sources . . . must be viewed in the light most favorable to the party opposing the motion. The non-movant's allegations must be taken as true and, when these assertions conflict with those of the movant, the former must receive the benefit of the doubt." Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, if the nonmovant's evidence is

merely colorable, or is not significantly probative, or just raises some metaphysical doubt as to the material facts, summary judgment may be granted. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1355, 89 L. Ed. 2d 538 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986).

III. DISCUSSION

A. Timeliness

Under Title VII, a plaintiff must file with the EEOC or its state or local equivalent within 300 days of the alleged actions or practice that constitutes illegal discrimination. See West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995). This filing is a prerequisite to a civil suit under Title VII. Id. To bring a suit under the PHRA, Pennsylvania law requires that a plaintiff first file an administrative complaint with the PHRC within 180 days of the alleged act of discrimination. Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1996). Because the federal period is longer, if a claim is untimely under Title VII, it will also be considered untimely under the PHRA. Using the limitations period for personal injury under Pennsylvania law, federal courts apply a two year statute of limitations to a claim under Section 1981. Goodman v. Lukens Steel Co., 777 F.2d 113, 120 (3d Cir. 1985), aff'd, 482 U.S. 656, 107 S. Ct. 2617, 96 L. Ed. 2d 572 (1987).

Though these limitations periods generally apply, the Supreme Court has recognized that they cannot be applied in all situations. Where a plaintiff has difficulty identifying precisely when the illegal conduct occurred or a violation is continuous and ongoing, the filing prerequisite of a Title VII action is "a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling." Zipes v. Trans World Airlines, 455 U.S. 385, 393, 102 S. Ct. 1127, 71 L. Ed. 2d 234 (1982). The continuing violation theory is one of these equitable exceptions and permits a plaintiff to "pursue a Title VII claim for discriminatory conduct that began prior to the filing period if he can demonstrate that the act is part of an ongoing practice or pattern of discrimination of the defendant." West, 45 F.3d at 754. In order to successfully present a continuing violation claim, the plaintiff must demonstrate that: (1) at least one discriminatory act occurred within the actual filing period and (2) the discrimination was not comprised of "isolated, intermittent acts of discrimination," but instead of a "persistent, on-going pattern." Id. at 754-55. Once a plaintiff has demonstrated a continuing violation, he or she may recover for discriminatory conduct that occurred prior to the filing period and offer evidence of all events that compose the violation. See id. at 755. If the plaintiff does not establish a continuing violation, he or she may recover only for

the conduct within the applicable statutory period. The Third Circuit has enumerated several factors relevant to determining whether or not a continuing violation exists. These include the subject matter of the various incidents, the frequency at which they occur, and most importantly, their "degree of permanence." Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 482 (3d Cir. 1997). When the alleged actions of the defendants are of the type that should trigger "an employee's awareness of and duty to assert his or her rights," then there is less likelihood that a continuing violation has occurred. Id. quoting Berry v. Board of Supervisors of L.S.U., 715 F.2d 971, 981 (5th Cir. 1983).

In the instant case, Plaintiff filed a claim with the EEOC on October 20, 1999. Unless the continuing violation theory or another type of equitable tolling applies, any claim based on an incident of discrimination that occurred prior to December 24, 1998 is time barred. For purposes of the PHRA claim, Plaintiff filed concurrently with the PHRC. Under the 180 day limitations period, all claims prior to April 23, 1999 will be time barred absent the continuing violation theory. Plaintiff filed this lawsuit in federal court on March 8, 2001. Under the two year statute of limitations applicable to his Section 1981 claim, all events prior to March 8, 1999 will be time barred absent the continuing violation theory.

Defendant contends that Plaintiff's failure to promote claims, accruing in 1992, 1994 and 1998 and Plaintiff's claim that he was required to undergo a certification process from 1994 through 1998, which no other employee at Pilling was required to undergo, occurred outside of the statutory limitations periods. Further, Defendant argues that the evidence does not support the inference of a continuing violation. Plaintiff admits that these alleged discriminatory acts fall outside the statutory limitations periods but argues that this Court should apply the continuing violation theory to allow his claims to go forward.

Again, to demonstrate a continuing violation, Plaintiff must show that: (1) at least one discriminatory act occurred within the statutory period and (2) the conduct was part of an ongoing pattern. See West, 45 F.3d at 754-55. Plaintiff points to his designation as Maintenance Trainee level 3 under Pilling's new Skilled Based Pay classification system in March 1999 as the discriminatory act occurring during the statutory period. Defendant does not appear to dispute that Plaintiff has satisfied the first element and that at least one alleged discriminatory incident took place within the filing period. In addition, the deposition testimony of Douglas Forde, Pilling's Human Resources manager, and Geoffrey Hampden, former Plant Manager at Pilling, supports Plaintiff's theory that he was overqualified for a designation of Maintenance Trainee and should have been initially

assigned to a higher classification. Thus, because this act of underclassification is an extension of Plaintiff's failure to promote complaints, the Court will accept Pilling's designation of Plaintiff as a Maintenance Trainee level 3 as an alleged adverse act occurring within the 300 day filing period.

Defendant contends that Plaintiff fails to satisfy the second requirement - that Pilling subjected him to a continuous pattern of discrimination. Plaintiff challenges this and argues that the alleged acts of discrimination involve the same type of discrimination through the same individual acting as his supervisor. Furthermore, Plaintiff argues that he was not aware of the allegedly discriminatory basis for the promotion denials because he was continually assured that so long as he kept doing his work and he completed the certification process, he would be rewarded with pay commensurate with his abilities and actual on the job activities. Plaintiff argues that these assurances led him to a false sense of security that makes application of the continuing violation theory appropriate.

The promotion denials that took place in 1992, 1994 and 1998 satisfy the first of the relevant factors articulated by the Third Circuit in Rush - they are of the same subject matter, racial discrimination. See Rush, 113 F.3d at 482. However, the second and third Rush factors, frequency and permanence, undercut Plaintiff's position. See id. The three promotions at issue

were available over the span of five and a half years. While courts have never set a specific standard for determining how close together the acts must occur to amount to a continuing violation, one promotion denial in 1992, the next promotion denial two years later in 1994 and a third promotion denial occurring four years later in 1998, does not strongly demonstrate recurring acts. Rather, Pilling's failures to promote Plaintiff are more in the nature of isolated employment decisions.

The promotion denials also have a degree of permanence which should have triggered Plaintiff's awareness of and duty to assert his rights (the third of the Rush factors). See Rush, 113 F.3d at 482. Promotion denials are discrete events with a permanent effect. Plaintiff admits that he immediately challenged each promotion denial to his supervisor at the time it happened, indicating his awareness of and willingness to assert his rights. Plaintiff argues that he was unaware of the allegedly discriminatory basis for the promotion denials until some later date because his supervisors reassured him that a promotion would be forthcoming after he completed the certification process. However, after the 1994 promotion was awarded to someone outside the company, Plaintiff admits that he felt he was being treated unequally and not given an opportunity like he should. See Plaintiff's Deposition p. 198. This is the very definition of discrimination. Pilling's hiring of non-

African Americans for promotions for which Plaintiff believed he was qualified were independent events that put Plaintiff on notice to file a charge of discrimination. Plaintiff knew by 1994, through Pilling's assurances, that he was to receive a promotion upon completion of the required certifications. If Plaintiff believed that Pilling was not considering him for available positions as promised, he should have acted at that time. Waiting to see whether or not Pilling would follow through on its promise was pointless. See Rush, 113 F.3d at 484 (holding failure to promote and train claim address discrete instances of alleged discrimination that are not susceptible to a continuing violation analysis).

The same degree of permanence is present with respect to the certification process Plaintiff was required to undergo. Here, the alleged discriminatory act is not that Plaintiff actually underwent and was certified in various skills, but rather that Pilling singled out Plaintiff for participation in the certification process as a prerequisite to promotion. This act of singling out took place in one meeting in 1994 while Plaintiff was discussing with his supervisor why he was not promoted to the last open Maintenance Technician A position. In his deposition testimony, Plaintiff explains his reaction to his supervisors announcement that he should go through a certification process, "I felt, once again, I was being

discriminated, because I was asking to be - to go through a process that no one else ever had to go through to be something." This indicates that Plaintiff was aware of the alleged discriminatory motive of Pilling and thus, he had a duty to assert his rights.

Plaintiff has not presented enough evidence to proceed on a continuing violation theory.¹ Therefore, Plaintiff's Title VII claims based on incidents of alleged discrimination occurring prior to December 24, 1998 are time barred. With respect to Plaintiff's PHRA claim, all claims prior to April 23, 1999 will be barred. Plaintiff's Section 1981 claim will be dismissed as it relates to all events prior to March 8, 1999. This ruling has the effect of barring Plaintiff's claims that Pilling failed to promote him to open and available position in 1992, 1994 and 1998 as well as Plaintiff's claim that Pilling required him to undergo a certification program in 1994 through 1998 which no other Pilling employee was required to complete.

Defendant alternatively argues that Plaintiff's failure to promote claims fail as a matter of law because he cannot prove that he was improperly denied promotions. As each promotion denial at issue comes prior in time to the accrual dates set forth above, each of Plaintiff's promotion claims is time barred and the Court need not analyze Defendant's alternative argument.

B. Termination

Plaintiff claims that his termination in February 2001 was racially motivated. Plaintiff also claims that his

1. The Court notes that the most recent United States Supreme Court ruling on this issue supports and does not alter its analysis and conclusion regarding Plaintiff's continuing violation argument. See National R.R. Passenger Corp. v. Morgan, No. 00-1614, 2002 WL 1270268 (June 10, 2002) (holding discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charge).

termination was done in retaliation for filing a charge with the EEOC. Defendant argues that both claims fail as a matter of law. First, Defendant argues that the discriminatory discharge claim fails because Plaintiff cannot establish that Pilling's reason for terminating his employment is pretextual. Second, Defendant argues that Plaintiff cannot establish a prima facie case of retaliation because he has not established the requisite causation between the protected activity of filing a charge with the EEOC and the adverse employment act of termination.

1. Discrimination

To establish a prima facie case of discriminatory discharge, a Title VII plaintiff must show (1) that he is a member of a protected class, (2) he was qualified for the position, (3) he was discharged, and (4) the position was ultimately filled by a person not of the protected class. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1066 n.5 (3d Cir. 1996) (citations omitted). Once a plaintiff has established a prima facie case, an inference of unlawful discrimination is created. The burden of production then shifts to the employer who can dispel the inference by articulating a legitimate, nondiscriminatory reason for its actions. If the employer meets this burden, the employee must then prove by a preponderance of the evidence that the articulated reason is a

pretext for discrimination. Duffy v. Paper Magic Group, Inc., 265 F.3d 163, 167 n.1 (3d Cir. 2001).

Defendant, assuming that Plaintiff has established a prima facie case, argues that Pilling has met its burden of articulating a legitimate nondiscriminatory reason in that Plaintiff was laid off as part of a reduction in force due to a restructuring of the company. Furthermore, Defendant argues that Plaintiff cannot meet his burden of proving that Defendant's reason was pretextual in that he offers no evidence that his layoff, which also included approximately 30 other individuals, was more likely than not motivated by discrimination.

To discredit the employer's proffered reason, Plaintiff must "demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons." Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir. 1994) (internal quotations omitted). The Court will now review Plaintiff's evidence, which it finds, when considered as a whole, and reviewed in the light most favorable to Plaintiff, adequately establishes that a factfinder could find Pilling's proffered reason "unworthy of credence." Id.

Plaintiff points out that Victor Marcus, Director of Engineering, recommended that five individuals, including Plaintiff, be laid off. Of those five individuals, two are African American and three are Caucasians. Plaintiff asserts that the three Caucasians were subsequently hired back by Pilling, while only the African American employees' terminations were final. The verified statement of Victor Marcus, attached as Exhibit J to Defendant's reply brief in support of its Motion for Summary Judgment, confirms Plaintiff's factual assertions. According to Mr. Markus, two of the laid off employees who are Caucasian were rehired in part-time, temporary positions relating to post-flood restorations and are being paid by Pilling's insurance carrier. The third laid off employee, who is Caucasian, was rehired after receiving computer-controlled equipment training in a subsequent job and after applying for and receiving an open position at Pilling. The fact that Pilling chose to rehire only Caucasian employees could suggest that African American employees were not giving the same opportunities at Pilling as non-African American employees.

Plaintiff also points out an inconsistency in Pilling's reasoning for choosing Plaintiff for termination. According to the deposition testimony of Michael Robnett, Pilling's Vice President of Operations, Plaintiff was selected to be laid off because he possessed an inadequate skill set. However, it is

questionable that Pilling believed Plaintiff possessed an inadequate skill set to perform his job when Pilling certified Plaintiff in the very skills which he was required to perform. From 1994 through 1998 Pilling certified Plaintiff in such skills as plumbing, HVAC, mechanical, electrical and electrical controls. Pilling has not explained why they were sufficiently satisfied with Plaintiff's performance of these skills in 1994 through 1998 for purposes of certifying him but dissatisfied in 2001 when it came time for Pilling to select employees for termination. Furthermore, Plaintiff's employee performance appraisals for the years 1992, 1994, 1998, and 2000 show that Pilling judged Plaintiff to be an employee who consistently exceeded job standards and to be very effective in all areas of his job and not someone who possessed inadequate job skills.

Additionally, Plaintiff asserts that Pilling employee Jerry Rivera had less seniority than he and was unable to perform skills which Plaintiff had the ability to perform, but was retained by Pilling during its reduction in force. Pilling's Protocol for Reduction in Force, a memorandum written by the Director of Human Resources, instructed that seniority and skill sets were factors to be considered for the selection of hourly employees for termination. If Plaintiff, who was selected for termination, had more seniority and a better skill set than a non-African American employee, who was retained, then an

appropriate inference could be drawn that Plaintiff was selected for termination with a discriminatory motive.

The Court notes that the inferences it has drawn are tenuous and that different inferences might be drawn from the evidence presented in the record. On summary judgment, however, the Court must consider the evidence taken in the light most favorable to the non-movant and determine whether Plaintiff has sufficiently called into question Pilling's nondiscriminatory reason for terminating Plaintiff. The fact that Pilling rehired three Caucasian employees, asserted that Plaintiff had an inadequate skill set in the face of certifying Plaintiff in the skills he was required to perform in the job, and keeping on a non-African American employee with less seniority and a lower skill set are sufficient to call into question Pilling's proffered legitimate, nondiscriminatory reason that Plaintiff was terminated in a reduction in force because Plaintiff was the employee with the narrowest skill set.

2. Retaliation

Under Third Circuit precedent, "to advance a prima facie case of retaliation, a plaintiff must show that: (1) the employee engaged in a protected employee activity; (2) the employer took an adverse employment action after or contemporaneous with the employee's protected activity; and (3) a causal link exists between the employee's protected activity and

the employer's adverse action." Farrell v. Planters Lifesavers Co., 206 F.3d 271, 279 (3d Cir. 2000).

Defendant does not dispute prongs one and two, but rather asserts that Plaintiff cannot demonstrate a nexus between the protected activity and any adverse employment action, and thus fails prong three of the prima facie test. "[I]n cases where a plaintiff must illustrate a 'causal link' for purposes of establishing retaliation, or show that certain conduct was 'used' as a basis for employment decisions, a plaintiff may rely upon a broad array of evidence to do so." Id. at 283-84. Plaintiff points to his deposition testimony in which he states that once he filed with the EEOC, he began to be treated differently. However, Plaintiff fails to support this conclusory statement by explaining or describing the difference in treatment. Other than the fact that the termination came after Plaintiff filed his charge of discrimination with the EEOC and that the individuals responsible for his termination allegedly had knowledge that he filed a claim of discrimination with the EEOC, Plaintiff has made no causal connection whatsoever between his EEOC filing and his termination. Furthermore, the Court can draw no inference from the timing between Plaintiff's EEOC claim and his termination. Plaintiff was terminated fifteen months after he filed his EEOC claim. This is not unusually suggestive of an inference that Pilling laid off Plaintiff in retaliation for filing a claim with

the EEOC. In sum, Plaintiff's evidence does not establish the necessary connection to substantiate his prima facie case of retaliation.

IV. CONCLUSION

For the reasons stated above, Defendant's Motion for Partial Summary Judgment is GRANTED in part and DENIED in part. Defendant's motion is granted with respect to the Plaintiff's claims of allegedly discriminatory conduct occurring prior to the applicable statutory periods set forth above. This ruling has the effect of barring Plaintiff's claims that Pilling failed to promote him to open and available position in 1992, 1994 and 1998 as well as Plaintiff's claim that Pilling required him to undergo a certification program in 1994 through 1998 which no other Pilling employee was required to complete.

Defendant's motion is also granted with respect to Plaintiff's claim of retaliatory discharge. Defendant's motion is denied as it relates to Plaintiff's claim of discriminatory discharge.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY T. RYALES,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 01-1116
	:	
PILLING WECK SURGICAL,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 24th day of June, 2002, upon consideration of Defendant's Motion for Partial Summary Judgment (Docket No. 14), Plaintiff's response in opposition thereto (Docket No. 15) and Defendant's reply (Docket No. 16) it is hereby **ORDERED** that Defendant's motion is **GRANTED** in part and **DENIED** in part.

More specifically it is **ORDERED** that:

1. Defendant's motion is **GRANTED** with respect to Plaintiff's Title VII claim based on incidents of alleged discrimination occurring prior to December 24, 1998. These claims are dismissed as time barred.

2. Defendant's motion is **GRANTED** with respect Plaintiff's Section 1981 claim based on incidents of alleged discrimination occurring prior to March 8, 1999. These claims are dismissed as time barred.

3. Defendant's motion is **GRANTED** with respect Plaintiff's Pennsylvania Human Relations Act claim based on incidents of alleged discrimination occurring prior to April 23, 1999. These claims are dismissed as time barred.

These ruling have the effect of barring Plaintiff's claims that Pilling failed to promote him to open and available position in 1992, 1994 and 1998 as well as Plaintiff's claim that Pilling required him to undergo a certification program in 1994 through 1998, which no other Pilling employee was required to complete.

4. Defendant's motion is **GRANTED** with respect Plaintiff's claim that his termination was done in retaliation for filing a charge of discrimination with the EEOC. This claim is dismissed.

5. Defendant's motion is **DENIED** with respect to Plaintiff's claim that his termination was racially motivated.

TRIAL is set for Monday, August 12, 2002 at 10:00 a.m.
in Courtroom 14A.

BY THE COURT:

RONALD L. BUCKWALTER, J.